

Farm Credit Administration

§613.3010

credit package or to accommodate a borrower's needs as long as the total credit results in being primarily an agricultural loan. However, the part-time farmer who needs to seek off-farm employment to supplement farm income or who desires to supplement off-farm income by living in a rural area and is carrying on a valid agricultural operation, shall have availability of credit for mortgages, other agricultural purposes, and family needs in the preferred position along with full-time farmers. Loans to farmers shall be on an increasingly conservative basis as the emphasis moves away from the full-time bona fide farmer to the point where agricultural needs only will be financed for the applicant whose business is essentially other than farming. Credit shall not be extended where investment in agricultural assets for speculative appreciation is a primary factor.

§613.3010 Financing for processing or marketing operations.

(a) *Eligible borrowers.* A borrower is eligible for financing for a processing or marketing operation under titles I and II of the Act only if the borrower:

(1) Is a bona fide farmer, rancher, or producer or harvester of aquatic products who regularly produces some portion of the throughput used in the processing or marketing operation; or

(2) Is a legal entity not eligible under paragraph (a)(1) of this section in which eligible borrowers under §613.3000(b) own more than 50 percent of the voting stock or equity and regularly produce some portion of the throughput used in the processing or marketing operation; or

(3) Is a legal entity not eligible under paragraph (a)(1) of this section in which eligible borrowers under §613.3000(b) own 50 percent or less of the voting stock or equity, regularly produce some portion of the throughput used in the processing or marketing operation and:

(i) Exercise majority voting control over the legal entity; or

(ii) Constitute a majority of the directors of a corporation, general partners of a limited partnership, or managing members of a limited liability company who exercise control over the

legal entity by determining and overseeing the policies, business practices, management, and decision-making process of the legal entity; or

(4) Is a legal entity not eligible under paragraph (a)(1) of this section in which eligible borrowers under §613.3000(b) meet all of the following criteria:

(i) Own at least 25 percent of the voting stock or equity in the processing or marketing operation;

(ii) Regularly produce 20 percent or more of the throughput used in the processing or marketing operation;

(iii) Maintain representation on the board of directors or in the applicable management structure of the entity.

(5) Is a legal entity not eligible under paragraph (a)(1) of this section that is a direct extension or outgrowth of an eligible borrower's operation and meets all of the following criteria:

(i) The legal entity was created for the primary purpose of processing or marketing the eligible borrower's throughput and would not exist but for the eligible borrower's involvement,

(ii) The legal entity fulfills a business need and supports the operation of the eligible borrower through product branding or other value-added business activity directly related to the operations of the eligible borrower,

(iii) The legal entity and the eligible borrower coordinate to operate in a functionally integrated manner, and

(iv) The legal entity regularly receives throughput produced by the eligible borrower representing either:

(A) At least 20 percent of the throughput used by the legal entity in the processing or marketing operation; or

(B) At least 50 percent of the eligible borrower's total output of the commodity processed or marketed.

(b) *Portfolio restrictions for certain processing and marketing loans.* Processing or marketing loans to eligible borrowers who regularly supply less than 20 percent of the throughput are subject to the following restrictions:

(1) *Bank limitation.* The aggregate of such processing and marketing loans made by a Farm Credit bank shall not exceed 15 percent of all its outstanding retail loans at the end of the preceding fiscal year.

(2) *Association limitation.* The aggregate of such processing and marketing loans made by all direct lender associations affiliated with the same Farm Credit bank shall not exceed 15 percent of the aggregate of their outstanding retail loans at the end of the preceding fiscal year. Each Farm Credit bank, in conjunction with all its affiliated direct lender associations, shall ensure that such processing or marketing loans are equitably allocated among its affiliated direct lender associations.

(3) *Calculation of outstanding retail loans.* For the purposes of this paragraph, “outstanding retail loans” includes loans, loan participations, and other interests in loans that are either bought without recourse or sold with recourse.

(c) *Reporting requirements.* Each System institution shall include information on loans made under authority of this section in the Reports of Condition and Performance required under § 621.12 of this chapter, in the format prescribed by FCA reporting instructions.

(d) *Institution policies.* The board of directors of each System institution making processing and marketing loans to legal entities under authority of this section must adopt a policy that addresses eligibility requirements for such entities and ensures that the institution, at a minimum, develops and implements:

(1) Procedures on how, at or before the time a loan is made, the institution will document:

(i) Eligible borrower ownership, control, throughput, integration of operations and other factors, as applicable, sufficient to establish eligibility of legal entities at the time a loan is made under this section; and

(ii) Each legal entity’s plan and intent for maintaining eligible borrower ownership, control, throughput, and integration of operations, as applicable, during the duration of the loan;

(2) Procedures that encourage financing under paragraph (a)(4) of this section of credit-worthy entities whose operations directly benefit producers, have local community investment support and provide accessible ownership opportunities for local farmers and ranchers.

(3) Procedures for determining functional integration for loans made under paragraph (a)(5) of this section that require consideration of all relevant facts and circumstances, which include the extent to which:

(i) The operations share resources such as management, employees, facilities, and equipment;

(ii) The operations are conducted in coordination with or reliance upon each other; and

(iii) The eligible borrower and legal entity are dependent upon each other for economic success.

(4) Portfolio restrictions necessary to comply with paragraph (b) of this section and any board-defined limits on financing provided under this section; and

(5) Reporting requirements necessary to comply with paragraph (c) of this section and any board-defined reporting on financing provided under this section.

[62 FR 4441, Jan. 30, 1997, as amended at 73 FR 30475, May 28, 2008]

§ 613.3020 Financing for farm-related service businesses.

(a) *Eligibility.* An individual or legal entity that furnishes farm-related services to farmers and ranchers that are directly related to their agricultural production is eligible to borrow from a Farm Credit bank or association that operates under titles I or II of the Act.

(b) *Purposes of financing.* A Farm Credit Bank, agricultural credit bank, or direct lender association may finance:

(1) All of the farm-related business activities of an eligible borrower who derives more than 50 percent of its annual income (as consistently measured on either a gross sales or net sales basis) from furnishing farm-related services that are directly related to the agricultural production of farmers and ranchers; or

(2) Only the farm-related services activities of an eligible borrower who derives 50 percent or less of its annual income (as consistently measured on either a gross sales or net sales basis) from furnishing farm-related services that are directly related to the agricultural production of farmers and ranchers.